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Specially Appearing for Defendant
South Coast Winery, Inc.

David L. Hoffman SBN: 143474
LAW OFFICES OF DAVID L. HOFFMAN
28494 Westinghouse Place, Suite 204
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Fax: (661) 775-9423
Of Counsel for Defendant
South Coast Winery, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Mark Carter, an individual, and Christy Carter,
an individual,) CASE NO. C08-02979 (EMC) ADR
Plaintiffs,)
vs.) DECLARATION OF DAVID L.
South Coast Winery, Inc.) HOFFMAN IN SUPPORT OF MOTION
Defendant.) TO DISMISS, STAY OR TRANSFER
) UNDER THE FIRST-TO-FILE RULE AND
) F.R.C.P. 12(b)(3)
)
) Date: August 27, 2008
) Time: 10:30 a.m.
) Courtroom: C, 15th Floor
) Judge: Hon. Edward M. Chen
)
)

I, DAVID L. HOFFMAN HEREBY DECLARE:

1. I am the attorney of record for the defendant in this action, South Coast Winery, Inc. and have personal knowledge of all of the facts and circumstances hereinafter set forth below.

1 2. This declaration is made in support of the instant motion seeking either the
2 dismissal, stay or transfer of the instant matter to the Central District of California.

3 3. On or about May 16, 2008, I caused to be filed my client's complaint for
4 declaratory judgment and unfair competition in the central district against the plaintiffs in this
5 matter, Mark and Christy Carter ("Carter Cellars"). A true and correct copy of said complaint is
6 attached hereto as Exhibit "A".

7 4. As early as April 28, 2007, my client began selling wine with the label "Carter
8 Estate". The sale was held on the premises of SCW's South Coast Winery & Resort in Temecula,
9 CA. See paragraph 12 of SCW's complaint.

10 5. And, on or about (copy paragraph 13 from complaint)

11 6. Thousands of bottles of wine were labeled prior to the letter my clients received
12 from an attorney representing the Carter's dated January 23, 2008. That letter asserted that my
13 client SCW's use of the "Carter Estate" label on its wine would cause confusion with "Carter
14 Cellars", the mark being used by Mark and Christy Carter. The letter specifically stated that if
15 my client used the brand on its wine, Carter Cellars would "act as necessary" to preserve the
16 value of their brand and mark. See paragraph 17 & 18 of Exhibit "A".

17 7. Having no idea that Carter Cellars had gone out and filed (on or about January 25,
18 2008) a federal trademark application for the mark "Carter Estate", in response to the January 23,
19 2008 letter, I sent a letter dated February 20, 2008 requesting copies of the Carter Cellars wine
20 labels. See Exhibit "N" to my client's complaint (Exhibit "A" of this declaration).

21 8. In response to my request, counsel for Carter Cellars sent a responsive letter. See
22 Exhibit "O" to my client's complaint.

23 9. I then found out that Carter Cellars had filed its application on "Carter Estates"
24 claiming an intent to use such a mark, and that that application was filed after Carter Cellars knew

1 that SCW had its COLA application on "Carter Estate" and long after SCW had filed its
2 application on Carter Estate Winery and Resort, and promoted the resort. In response to the letter
3 of Exhibit "O," I sent a letter dated April 29, 2008 indicating that my clients had received
4 Certificate of Label Approval "(COLA)" from the ATF for use of the label, had bottled wine with
5 that label and even sold some. See Exhibit "P" and paragraph 22 of complaint.
6

7 10. Thus, the first cause of action for declaratory relief asserted by my client involves
8 a resolution of the dispute between the parties over my client's continued use of the name "Carter
9 Estate."

10 11. I respectfully submit to the Court that while my client had a reasonable
11 apprehension of suit, suit was not "imminent" by any stretch of the imagination. No specific
12 deadline for any lawsuit was given by Carter Cellars. SCW was left hanging, with many many
13 bottles of wine labeled with "Carter Estate" and with its resort being promoted with the name
14 "Carter Estate Winery and Resort."

15 16. SCW did not file suit in the Central District to pre-empt defending an action in
17 Northern California.

18 19. 13. In fact, if the Court examines my letter of April 29, 2008 (Exhibit "P") to the
20 complaint, I requested that by May 5, 2008 Carter Cellars withdraw their intent to use application
21 on "Carter Estate" and confirm in writing that my client SCW's use and registration of "Carter
22 Estate" is acceptable to Carter Cellars.

23 24. 14. That May 5, 2008 deadline came and went and I received no further writings or
25 communications from the attorneys for Carter Cellars.

26 27. 15. We waited another eleven (11) days before filing suit on May 16, 2008. Suit was
28 commenced because the issue had not been resolved, and as I indicated, SCW was left hanging

1 including having thousands of bottles of wine contain the COLA approved "Carter Estate" label
2 and SCW being in the process of building and promoting its "Carter Estate Winery and Resort."

3 16. Thus, the dispute had to be resolved, even if Carter Cellars' attorney was not
4 responding to my last communication which indicated that we would continue to use the mark.

5 17. It was therefore imperative that the issue be resolved, and we could not simply
6 wait around to find out whether or not Carter Cellars were going to file suit at some time in the
7 future. A concrete dispute existed and it had to be resolved as expeditiously as possible.

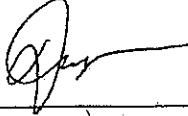
8 18. SCW's Central District lawsuit is not simply an action for declaratory relief. The
9 third cause of action is an action for federal unfair competition seeking an order from the Court
10 cancelling Carter Cellars' application for the "Carter Estate" mark, which as I indicated before,
11 was filed by Carter Cellars with specific knowledge that SCW had already filed and had its
12 COLA application for the label and mark on its bottles of wine approved, and also well after
13 SCW had filed its federal trademark application on "Carter Estate Winery and Resort."

14 19. Carter Cellars apparently filed their action in this matter on June 17, 2008.
15 However, Carter Cellars also filed an answer and counterclaim in the Central District litigation
16 commenced by my client SCW on June 20, 2008. Attached hereto as Exhibit "B" is a true and
17 correct copy of Carter Cellars' answer and counterclaims with a proof of service showing that it
18 was served on June 20, 2008.

19 20. I respectfully submit to the Court that the four counterclaims asserted by Carter
20 Cellars in the Central District case are the same or essentially the same causes of action asserted
21 by Carter Cellars in the instant action.

22 21. Based upon the foregoing, on behalf of my client SCW, I respectfully request that
23 the Court either dismiss, stay or transfer the instant action.

1 I declare the foregoing to be true subject to the penalties of perjury under the laws of the
2 United States and the laws of California this 21st day of July, 2008 within the City of Valencia,
3 State of California.

4 
5 DAVID L. HOFFMAN

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EXHIBIT A

1 David L. Hoffman, Esq., No. 143,474
2 LAW OFFICES OF DAVID L. HOFFMAN
3 28494 Westinghouse Place, Suite 204
4 Valencia, California 91355
5 Telephone: (661) 775-0300
6 Telefax: (661) 775-9423
7
8 Attorneys for Plaintiff,
9 SOUTH COAST WINERY, INC.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SOUTH COAST WINERY, INC.,
California Corporation,

Plaintiff,
vs.

MARK CARTER and CHRISTY
CARTER, both individuals,

Defendants.

CASE NO.

CV 08 - 03269 CAS

COMPLAINT FOR:

1. DECLARATORY JUDGMENT
OF NON-INFRINGEMENT OF
TRADEMARK;
2. DECLARATORY JUDGMENT
OF INVALIDITY OF
TRADEMARK
APPLICATION; AND
3. UNFAIR COMPETITION

JURY DEMAND

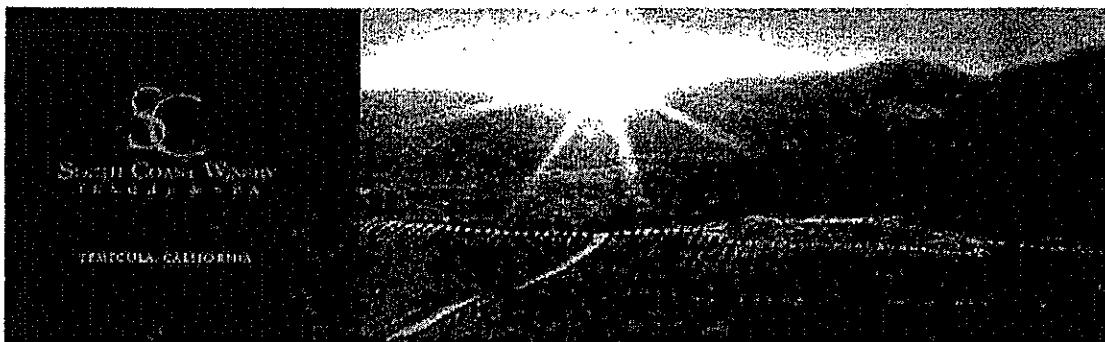
Plaintiff SOUTH COAST WINERY, INC. ("SCW" or "Plaintiff") alleges:

EXHIBIT A

[Home | South Coast Winery & Resort](#)

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[HOME](#) [VILLAS](#) [RESTAURANT](#) [SPA](#) [WINERY](#) [GROUPS & WEDDINGS](#) [WINE CLUB](#) [SHOP NOW](#) [RESORT EVENTS](#) [ABOUT US](#)

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JIM & MAGGIE

<http://www.wineresort.com/>

5/6/2008

EXHIBIT B

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Record 1 out of 1[TARR Status](#) | [ASSIGN Status](#) | [TDR](#) | [TTAB Status](#) | *(Use the "Back" button of the Internet Browser to return to TESS)***CARTER ESTATE WINERY AND RESORT**

Word Mark CARTER ESTATE WINERY AND RESORT
Goods and Services IC 043. US 100 101. G & S: Resort hotels; Resort lodging services; Restaurant services
 IC 044. US 100 101. G & S: Health spa services for health and wellness of the body and spirit offered at a health resort; Health spa services, namely, cosmetic body care services

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78933334

Filing Date July 19, 2006

Current Filing Basis 1B

Original Filing Basis 1B

Published for Opposition April 8, 2008

Owner (APPLICANT) South Coast Winery, Inc. CORPORATION CALIFORNIA P.O. Box 507 Santa Ana CALIFORNIA 92702

Attorney of Record David L. Hoffman

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ESTATE WINERY AND RESORT" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

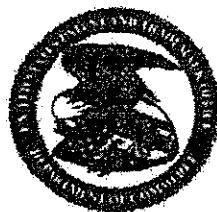
Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT C

Document Description: Notice of Publication Mail / Create Date: 19-Mar-2008



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

Mar 19, 2008

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:	2. Mark:
78/933,334	CARTER ESTATE WINERY AND RESORT Standard Character Mark
3. International Class(es):	5. Applicant:
43, 44	South Coast Winery, Inc.
4. Publication Date:	
Apr 8, 2008	

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

Correspondence Address:

David L. Hoffman

TMP&I

Law Offices of David L. Hoffman
Suite 204
28494 Westinghouse Place
Valencia CA 91355

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Typed Drawing

Word Mark	BRIAN CARTER
Goods and Services	IC 033. US 047 049. G & S: Wine. FIRST USE: 20021102. FIRST USE IN COMMERCE: 20021126
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78102168
Filing Date	January 11, 2002
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	August 13, 2002
Registration Number	2751396
Registration Date	August 12, 2003
Owner	(REGISTRANT) WHC, Inc. CORPORATION WASHINGTON 10604 N.E. 38th Place, Suite 132 Kirkland WASHINGTON 980337903
 (LAST LISTED OWNER) BRIAN CARTER CELLARS, LLC LTD LIABILITY CO WASHINGTON 10604 N.E. 38TH PLACE, SUITE 132 KIRKLAND WASHINGTON 980337903	
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	R. Corbin Houchins
Type of Mark	TRADEMARK
Register	PRINCIPAL
Other Data	The name "BRIAN CARTER" identifies a living individual whose consent is of record.

EXHIBIT E

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Typed Drawing

Word Mark CARTER
Goods and Services IC 033, US 047 049, G & S: WINE, FIRST USE: 20010701, FIRST USE IN COMMERCE: 20010701

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76517431

Filing Date May 28, 2003

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition September 6, 2005

Registration Number 3018996

Registration Date November 29, 2005

Owner (REGISTRANT) Carter, Christie INDIVIDUAL UNITED STATES 301 L Street Eureka CALIFORNIA 955010571

(REGISTRANT) Carter, Mark INDIVIDUAL UNITED STATES 301 L Street Eureka CALIFORNIA 955010571

(LAST LISTED OWNER) CARTER VINEYARDS, LLC LLC OREGON 25 NW 23RD PLACE, SUITE 6 PORTLAND OREGON 97210

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record J. Scott Gerien

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

EXHIBIT F

04/13/2008 17:06 FAX 4158823232

OPINION WICKERSHAM BRICKSON

004/005

CONSENT AGREEMENT

This Consent Agreement is made and entered into by and between Mark and Christine Carter dba Carter Cellars ("Carter"), individuals residing at 301 L Street, Eureka, CA 95501-0571 and WHC, Inc. ("WHC"), a corporation organized and existing under the laws of the State of Washington with a principal place of business at 10604 N.E. 38th Place, Suite 132, Kirkland, WA 98033-7903 (collectively, "the Parties").

Background

1. WHC is the owner of Federal Trademark Registration No. 2,751,396 which issued on August 12, 2003 for the trademark BRIAN CARTER for wine in International Class 33.
2. Carter filed Federal Trademark Application Serial No. 76,517,431, on May 28, 2003 for the trademark CARTER for wine in International Class 33.
3. The Trademark Examining Attorney assigned to review Carter's application has refused registration of CARTER based upon a perceived likelihood of confusion with WHC's Federal Trademark Registration No. 2,751,396.
4. The parties are informed and believe that their concurrent uses of BRIAN CARTER for wine and CARTER for wine will not cause confusion, deception or mistake among consumers or the trade.

AGREEMENT

The Parties have thought out their commercial interests with care and as reputable business persons, and users of valuable marks, have no interest in causing public confusion. *In re E.I. DuPont de Nemours & Co.*, 177 U.S.P.Q. 563 (CCPA 1973). In view of the foregoing, and in consideration of the mutual undertaking set forth herein, the parties agree as follows:

(1) That no likelihood of confusion exists between the marks BRIAN CARTER for wine and CARTER for wine based on the following factors:

(a) The manner in which the Parties' marks are used is different. While both Parties' marks encompass the term "CARTER," the manner in which they are used on packaging and labels is different, each party utilizing different stylized type and graphics which distinguish between the brands. Further, WHC utilizes the composite BRIAN CARTER, with both terms of the composite appearing in equal size and type to create a unitary mark distinct in sight, sound and meaning from Carter's CARTER mark.

(b) The consumers of the products at issue are very sophisticated and are not likely to be confused and will be able to tell the products apart based on the differences between the marks.

May 17, 2008 4:56PM Law Offices of David L. H 6617750391

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04/13/2008 17:08 FAX 41682212

OPEN MICHAELA BRICKSON

B005/005

(3) The Parties agree to cooperate and consult with one another, in good faith, should future conditions or developments suggest to either of the Parties' respective marks are being confused with one another, all with a view to ensuring that any potential confusion between the Parties' marks, as they are used in commerce, shall occur. Specifically, the Parties agree that if one of them notifies the other that specific instances of confusion have arisen due to the other's actions, or to actions of a third party in advertising or promoting the other's mark and/or products or services provided thereunder, the notified party will take appropriate steps, not inconsistent with its ownership interests as is reasonably possible, to correct such confusion and to avoid further confusion.

(4) The Parties agree that neither will oppose as otherwise infringe with the other in obtaining and maintaining its respective registration of URBAN CARTER or CARTER, for wine in International Class 33, so long as the differences between the marks are maintained.

(5) Should either party abandon its mark, its rights shall be lost and the other party may thereafter use its mark in all proper ways, unrestricted by the terms of this Consent Agreement, and may thereafter apply for and obtain a federal registration of the mark unregistered by this Consent Agreement.

(6) Both Parties to this Consent Agreement may license or assign their respective rights hereunder, in whole or in part, provided that such license or assignment does not exceed beyond the provisions of this Consent Agreement.

(7) This Consent Agreement is being signed in multiple copies. Each copy shall be considered an original for all purposes.

IN WITNESS WHEREOF, the Parties hereto have signed this Consent Agreement, effective as of the last date of signature below.

MARK AND CHRISTINE CARTER
URBAN CARTER CELLARS

By: 
Mark Carter

Date: 4/27/08

WHC, INC.

By: 
Christine Carter

Title: Vice President

Date: 4/22/08

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Typed Drawing

Word Mark CARTER VINEYARD
Goods and Services IC 031. US 001 046. G & S: fresh grapes. FIRST USE: 19860000. FIRST USE IN COMMERCE: 19890000

IC 033. US 047 049. G & S: wine. FIRST USE: 19900000. FIRST USE IN COMMERCE: 19900000
Mark Drawing Code (1) TYPED DRAWING
Serial Number 78302011
Filing Date September 18, 2003
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition April 1, 2008
Owner (APPLICANT) Carter Vineyard, LLC LTD LIAB CO OREGON 1930 NW Irving Street, No. 505 Portland OREGON 97209
Attorney of Record Pierre C. Van Rysselberghe
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VINEYARD" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE



EXHIBIT H

CONSENT AGREEMENT

This CONSENT AGREEMENT (the "Agreement") is made and entered into by and between MARK CARTER and CHRISTY CARTER (collectively, "Mark and Christy Carter"), individuals with a principal place of business located at 301 L Street, Eureka, California 95501-0571, and CARTER VINEYARD, LLC ("Carter Vineyard"), an Oregon limited liability company with a principal place of business located at 1930 NW Irving Street, No. 505, Portland, Oregon 97209 (collectively, the "Parties").

Background

1. Carter Vineyard is the owner of: (a) U.S. Trademark Application Serial No. 78/302011 for the mark CARTER VINEYARD for fresh grapes in Class 31 and wine in Class 33, and (b) U.S. Trademark Registration No. 3,018,996 for the mark CARTER for wine in Class 33.

2. Mark and Christy Carter are the owners of U.S. Trademark Application Serial No. 77/234177 for the mark CARTER CELLARS for wine in Class 33.

3. The Parties are informed and believe that their concurrent uses in the United States of CARTER VINEYARD for fresh grapes and wine and CARTER for wine on the one hand, and CARTER CELLARS for wine on the other, will not cause confusion, deception or mistake among consumers or the trade.

AGREEMENT

The Parties have thought out their commercial interests with care and as reputable business persons, and users of valuable marks, and have no interest in causing public confusion. In re E.I. DuPont de Nemours & Co., 177 U.S.P.Q. 563 (CCPA 1973). In view of the foregoing, and in consideration of the mutual undertaking set forth herein, the Parties agree as follows:

(1) That no likelihood of confusion exists between the marks CARTER VINEYARD for fresh grapes in Class 31 and wine in Class 33 and CARTER for wine in Class 33 on the one hand, and CARTER CELLARS for wine in Class 33 on the other, based upon the below listed factors:

(a) The Parties' respective marks are different in appearance and sound. Consumers viewing Mark and Christy Carter's CARTER CELLARS mark are unlikely to believe it to be either Carter Vineyard's CARTER VINEYARD or CARTER marks as the use of "CELLARS" in association with the "CARTER" surname distinguishes Applicants' mark.

(b) The Parties' goods under the marks are different. Carter Vineyard's CARTER VINEYARD mark is used in association with fresh grapes grown in Oregon and wines made from such grapes and Carter Vineyard's CARTER mark is also used on wines made from grapes grown in Oregon, while Mark and Christy Carter's CARTER CELLARS mark is used on wine made from grapes grown in California.

May 17 2008 4:58PM Law Offices Of David L. H 6617750391

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Apr 21 2008 4:50PM HP LASERJET FAX
03/28/2008 11:18 FAX 707 255 8248 D P & F

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(2) The Parties agree to cooperate and consult with one another, in good faith, should future conditions or developments suggest to either that the Parties' respective marks are being confused with one another, all with a view to ensuring that no substantial confusion between the Parties' marks, as they are used in commerce, shall occur. Specifically, the Parties agree that if one of them notifies the other that specific instances of confusion have arisen due to the other's actions, or to actions of a third party in advertising or promoting the other's mark, and/or products or services provided thereunder, the notified party will take appropriate steps, not inconsistent with its ownership interests as is reasonably possible, to correct such confusion and to avoid further confusion.

(3) Carter Vineyard agrees that it will not oppose, cancel, or otherwise interfere with Mark and Christy Carter's obtaining and maintaining registration of CARTER CELLARS in the U.S., including U.S. Trademark Application Serial No. 77/234177 for CARTER CELLARS for wine in Class 33.

(4) Mark and Christy Carter agree that they will not oppose, cancel or otherwise interfere with Carter Vineyard's obtaining and maintaining registration of CARTER VINEYARD for fresh grapes in Class 31 and wine in Class 33 (Application Serial No. 78/302011) and CARTER for wine in Class 33 (Registration No. 3,018,996).

(5) Should either party abandon its respective marks, its rights shall be lost and the other party may thereafter use its mark in all proper ways, unrestrained by the terms of this Consent Agreement, and may thereafter apply for and obtain registration of its mark unrestricted by this Consent Agreement.

(6) Both Parties to this Consent Agreement may license or assign their respective rights hereunder, in whole or in part, provided that such license or assignment does not extend beyond the provisions of this Consent Agreement.

IN WITNESS WHEREOF, the Parties hereto have signed this Consent Agreement, effective as of the last date of signature below.

MARK AND CHRISTY CARTER

Mark Carter

Date: 4/18/08

Christy Carter

Date: 4/21/08

CARTER VINEYARD, LLC

By: Christy CarterTitle: Owner / ManagerDate: 4/27/08

EXHIBIT I

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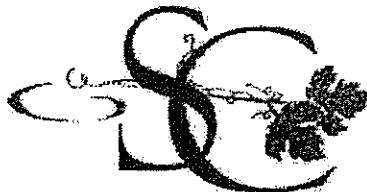
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CARTER ESTATE

Word Mark	CARTER ESTATE
Goods and Services	IC 033, US 047 049, G & S: Wine made by an estate winery in Southern California and marketed in connection with a Southern California resort adjacent the winery, and sold on the premises of the resort; and wine made by an estate winery in Southern California and marketed in connection with a Southern California resort, and shipped to wine club members
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77452815
Filing Date	April 19, 2008
Current Filing Basis	NO FILING BASIS
Original Filing Basis	NO FILING BASIS
Owner	(APPLICANT) South Coast Winery, Inc. CORPORATION CALIFORNIA P.O. Box 507 Santa Ana CALIFORNIA 92702
Attorney of Record	David L. Hoffman
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ESTATE" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK

EXHIBIT J



**SOUTH COAST WINERY
RESORT & SPA**
Temecula, California

34843 Rancho California Road, Temecula CA 92591 (951) 587-WINE (9463)

Founded: 2002

Owner: *Jim Carter*

Size: 39 acres

Winery: *Winemakers: Jon McPherson and Javier Flores*

Production facility: 5,000 square feet

Barrel storage: 29,000 square feet

Annual capacity: 50,000 cases

Labels: *South Coast Winery
Muscat Canelli, Viognier, Cabernet Rose,
Merlot Rose, Reserve Chardonnay, Merlot,
Chardonnay Sans Chéne, Syrah, Riesling,
Brut Sparkling, Extra dry Sparkling, Black
Jack Port*

*Wild Horse Peak Mountain Vineyard
Cabernet Sauvignon, Merlot, Meritage, and
Syrah*

*Elevation
Syrah, Merlot and Sauvignon Blanc*

Carter Estates scheduled for release 2007

Vineyards: *Rolling Hills Vineyard – (26 acres planted)
Carter Estate Vineyard -- 109 acres (37 acres planted)
South Coast Vineyard -- 15.5 acres planted
Wild Horse Peak Mountain Vineyard -- 400 acres (200 acres planted)*

Restaurant: *Vineyard Rose (open daily for breakfast, lunch and dinner)
Executive Chef: Alessandro Serni
12,000 square feet
160 seats indoors/270 patio seats*

Vineyard Villas: *76 rooms with vineyard vistas*

Spa: *15,000 square feet with heated outdoor pool*

Conference and meeting space: *7,200 square feet (capacity: 500 people)*

Employees: *160*

Website: www.wineresort.com

*Wild Horse Peak Mountain
Vineyard 400 acres (160 acres
planted)*

EXHIBIT K

02/21/2008 09:31 FAX 707 255

D. P. & F.

图 027

Page 1 of 1

EXHIBIT L

01/23/2008 10:55 FAX 707 555 8240

D P & F

001



DICKENSON, PEATMAN & FOGARTY
A Professional Law Corporation

J. SCOTT GERJEN
sgerjen@dpf-law.com

809 Coombs Street
Napa, CA 94559-1977
Tel: 707 252 7122
Fax: 707 253 6876

www.dpf-law.com

January 23, 2008

VIA FACSIMILE AND US MAIL 951-587-8410

Mr. Jim Carter
Proprietor
South Coast Winery Resort & Spa
34843 Rancho California Rd.
Temecula, CA 92591

Re: Infringement of CARTER CELLARS Mark

Dear Mr. Carter:

We are intellectual property counsel to Mark and Christy Carter (the "Carters"). The Carters are the owners of the trademark CARTER CELLARS for wine based on their use of the mark CARTER since 2001 and the mark CARTER CELLARS since 2006. The CARTER CELLARS wine has received great critical acclaim and media attention through the years, with the most recent vintages receiving scores of 95 and 96 from the *Wine Spectator* and being named among the best Cabernet wine from California. Obviously, the CARTER CELLARS brand possesses extensive consumer goodwill and recognition and is one of our clients' most valuable assets.

It recently came to our client's attention that South Coast Winery Resort & Spa ("South Coast") has obtained certificates of label approval ("COLAs") for a CARTER ESTATE brand of wine. This is extremely problematic as this brand will likely cause confusion with our clients' CARTER CELLARS brand. This likelihood of confusion is further exacerbated by the fact that the South Coast CARTER ESTATE brand appears to be intended for use on Cabernet and Merlot, our clients' two main varietals, will be made from California grapes, as is our clients' wine, and utilizes a script-style font that is virtually identical to that of our client. Thus, South Coast's use of the CARTER ESTATE mark would infringe the Carters' valuable CARTER CELLARS mark and violate the federal Lanham Act and California unfair competition laws.

Accordingly, on behalf of our clients, we demand that South Coast not adopt the CARTER ESTATE mark or any other mark encompassing the term "Carter" for use on wine. In light of the fact that South Coast does not appear to have begun selling any wine with the CARTER ESTATE label, we trust that this will not be a problem. If South Coast will agree to comply with such request, we believe that this matter can be amicably resolved.

NAPA & SANTA ROSA

44

01/23/2008 16:55 FAX 707 255 8248

D P & F

002

Mr. Jim Carter
January 23, 2008
Page 2

However, should South Coast proceed to use the CARTER ESTATE brand on wine, the Carters will act as necessary to preserve the value of their CARTER CELLARS brand and mark. Please advise us by February 8, 2008 as to whether we may expect South Coast's cooperation in this matter.

This letter is written without prejudice to the Carters' rights, all of which are expressly reserved.

Sincerely,

DICKENSON, PEATMAN & FOGARTY



J. Scott Gerien

cc: Mark and Christy Carter

EXHIBIT M

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CARTER ESTATE

Word Mark	CARTER ESTATE
Goods and Services	IC 033, US 047 049, G & S: Wine
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77380943
Filing Date	January 25, 2008
Current Filing Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Carter, Christy INDIVIDUAL UNITED STATES 301 L Street Eureka CALIFORNIA 955010571
	(APPLICANT) Carter, Mark INDIVIDUAL UNITED STATES 301 L Street Eureka CALIFORNIA 955010571
Attorney of Record	J. Scott Gerien
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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EXHIBIT N

LAW OFFICES OF DAVID L. HOFFMAN

28494 WESTINGHOUSE PLACE, SUITE 204
VALENCIA, CALIFORNIA 91355

Telephone (661) 775-0300

Faxsimile (661) 775-9423

E-mail: dlhpatent@sbcglobal.net

PATENT, TRADEMARK, COPYRIGHT & RELATED CAUSES

February 20, 2008

Mr. J. Scott Gerien
Dickenson, Peatman & Fogarty
809 Coombs Street
Napa, CA 94559-2799

VIA TELECOPIER and FIRST CLASS MAIL
TRANSMISSION FAX NO.: (707) 255-6876
TOTAL PAGES: 3

**Re: Alleged Infringement of CARTER CELLARS Mark
Our Matter No.: 06-10078**

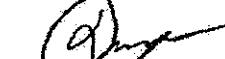
Dear Mr. Gerien:

Your letter of January 23, 2008 to Mr. Jim Carter has been forwarded to me for consideration and response. As you know, your allegations of trademark infringement are based on common law rights and not any registrations. Accordingly, the only way we can make any initial evaluation at all is if we have a copy of your client's labels for the alleged CARTER and CARTER CELLARS marks, or other specimens, and some written evidence of first use. At that point, if appropriate, we can then address your concerns.

Please also note that your letter does not accurately state the mark (CARTER ESTATE WINERY AND RESORT) upon which South Coast Winery, Inc. filed its federal application.

We look forward to receiving the requested information.

Very truly yours,
LAW OFFICES OF DAVID L. HOFFMAN



David L. Hoffman

DLH/crb

Encl.

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CARTER ESTATE WINERY AND RESORT

Word Mark: CARTER ESTATE WINERY AND RESORT
Goods and Services: IC 043. US 100 101. G & S: Resort hotels; Resort lodging services; Restaurant services
IC 044. US 100 101. G & S: Health spa services for health and wellness of the body and spirit offered at a health resort; Health spa services, namely, cosmetic body care services
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 78933334
Filing Date July 19, 2006
Current Filing Basis 1B
Original Filing Basis 1B
Owner (APPLICANT) South Coast Winery, Inc. CORPORATION CALIFORNIA P.O. Box 507 Santa Ana CALIFORNIA 92702
Attorney of Record David L. Hoffman
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE ESTATE WINERY AND RESORT APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

Trademark Electronic System (TESS)

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Feb. 20 2008 09:47AM

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YOUR FAX NO. : 661 775 9423

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THEN SELECT OFF BY USING '+' OR '-'.

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EXHIBIT O

02/21/2008 09:24 FAX 707 255 49

D P & F

001

DP&F

DICKENSON, PEATMAN & FOGARTY
A Professional Law CorporationJ. SCOTT GERIEN
sgerien@dpf-law.com809 Coombs Street
Napa, CA 94559-2977
Tel: 707 252 7122
Fax: 707 255 6876www.dpf-law.com

February 21, 2008

VIA FACSIMILE AND US MAIL 661-775-9423

David L. Hoffman, Esq.
28494 Westinghouse Place, Ste. 204
Valencia, CA 91355Re: Infringement of CARTER CELLARS Mark

Dear Mr. Hoffman:

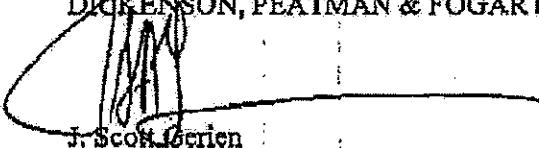
We are in receipt of your letter of February 20, 2008. As per your request, attached please find various Certificates of Label Approval (COLAs) which reflect our clients' label for the last several vintages, and all of which precede any date of first use which might be claimed by your client. Also enclosed please find print-outs of archived *Wine Spectator* reviews of our clients' CARTER wine which demonstrate the use of the mark and which precede any date of first use which might be claimed by your client.

As for your assertion that our demand letter does not accurately state your client's mark, this is mistaken. While your client may have filed a federal service mark application for CARTER ESTATE WINERY AND RESORT for hotel and spa services, its COLA for the wine label clearly indicates the mark to be used is CARTER ESTATE. Enclosed for your reference is a copy of this COLA.

In light of the above, we look forward to your prompt substantive response.

Sincerely,

DICKENSON, PEATMAN & FOGARTY


J. SCOTT GERIEN

Attachments

cc: Carter Cellars

NAPA & SANTA ROSA

EXHIBIT P

LAW OFFICES OF DAVID L. HOFFMAN
28494 WESTINGHOUSE PLACE, SUITE 204
VALENCIA, CALIFORNIA 91355

Telephone (661) 775-0300
Facsimile (661) 775-9423
E-mail David@DLHpatent.com
www.DLHpatent.com

PATENT, TRADEMARK, COPYRIGHT & RELATED CAUSES

April 29, 2008

Mr. J. Scott Gerien
Dickenson, Peatman & Fogarty
809 Coombs Street
Napa, CA 94559-2799

VIA TELECOPIER and FIRST CLASS MAIL
TRANSMISSION FAX NO.: (707)255-6876
TOTAL PAGES: 2

Re: Alleged Infringement of CARTER CELLARS Mark
Our Matter No.: 06-10078

Dear Mr. Gerien:

We have analyzed your last letter. We observed that your client changed its mark from CARTER to CARTER CELLARS, and does not have a federally registered mark at this point. Its application has been rejected, and its most recent response takes the position that CARTER CELLARS is not confusingly similar to CARTER or to CARTER VINEYARD, and that all may peacefully co-exist.

With respect to South Coast Winery's bottle label, CARTER ESTATE, it was approved by COLA some time ago. After COLA approval, South Coast Winery ("SCW") bottled the wine with the label as is customary in the industry. Changing the label can destroy the wine due to the label removing process. Moreover, we already have use. Because no one company can claim exclusive right to CARTER [plus any other word] for wine, because re-labelling would destroy the wine, and other reasons, my client is set on going forward.

We became aware of your client's federal application on CARTER ESTATE for wine obviously filed after it became aware of SCW's use or intended use of CARTER ESTATE, thereby and in essence admitting that CARTER CELLARS would not cover CARTER ESTATE.

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J. Scott Gerien, Esq.
April 29, 2008
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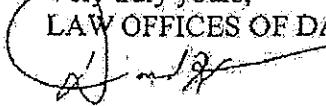
Law Offices of David L. Hoffman

We demand that your client do the following immediately and no later than the Monday, May 5, 2008:

1. Withdraw its federal intent to use application on CARTER ESTATE by an express abandonment thereof; and
2. Confirm in writing to us that our use and registration of CARTER ESTATE for wine is acceptable to it, and that if requested by us, it will sign a joint use agreement comparable to that which it already has with CARTER VINEYARDS.

We look forward to your client's written and signed acknowledgement of the above two conditions by close of business on May 5, 2008.

Very truly yours,
LAW OFFICES OF DAVID L. HOFFMAN



David L. Hoffman

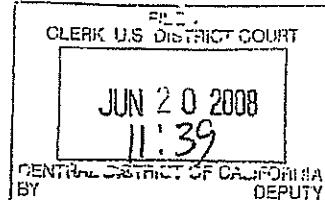
DLH/crb

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EXHIBIT B

1 J. SCOTT GERIEN, State Bar No. 184728
 2 MEGAN FERRIGAN HEALY, State Bar No. 229177
 3 DICKENSON, PEATMAN & FOGARTY
 4 809 Coombs Street
 5 Napa, California 94559
 6 Telephone: (707) 252-7122
 7 Facsimile: (707) 255-6876

8 Attorneys for Defendants
 9 MARK CARTER and CHRISTY CARTER



8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

10
 11 SOUTH COAST WINERY, INC., a
 12 California Corporation,
 13 Plaintiff,

14 v.
 15 MARK CARTER and CHRISTY
 16 CARTER, both individuals,
 17 Defendants.

CASE NO. CV 08-03269 CAS (RCx)

ANSWER AND COUNTERCLAIM FOR

1. Federal Unfair Competition
2. California Unfair Competition
3. California False or Misleading Statements
4. Common Law Trademark Infringement

18 MARK CARTER and CHRISTY
 19 CARTER, both individuals,
 20 Counterclaimants,

21 v.
 22 SOUTH COAST WINERY, INC., a
 23 California Corporation,
 24 Counterdefendant.

DPE
 DICKENSON, PEATMAN & FOGARTY
 A Professional Law Corporation

25
 26
 27 BY FAX
 28

1 Defendants Mark Carter and Christy Carter, both individuals ("Defendants"), by their
2 undersigned attorneys, as and for their Answer to the Complaint filed by Plaintiff on May 16,
3 2008 ("Complaint"), answer as follows:

- 4 1. Answering Paragraph 1 of the Complaint, the nature of the action and the relief
5 sought by Plaintiff South Coast Winery, Inc., a California corporation ("Plaintiff")
6 as set forth in Paragraph 1 speaks for itself and Defendants deny that Plaintiff is
7 entitled to the relief requested.
- 8 2. Answering Paragraph 2 of the Complaint, Defendants admit that they conduct
9 business within the judicial district and that venue is proper.
- 10 3. Answering Paragraph 3 of the Complaint, Defendants are without sufficient
11 information to admit or deny the allegations contained therein and on such basis
12 deny the allegations.
- 13 4. Answering Paragraph 4 of the Complaint, Defendants admit the allegations
14 contained therein.
- 15 5. Answering Paragraph 5 of the Complaint, Defendants are without sufficient
16 information to admit or deny the allegations contained therein or the authenticity of
17 the exhibit reference therein and on such basis deny the allegations.
- 18 6. Answering Paragraph 6 of the Complaint, Defendants are without sufficient
19 information to admit or deny the allegations contained therein or the authenticity of
20 the exhibits referenced therein and on such basis deny the allegations.
- 21 7. Answering Paragraph 7 of the Complaint, Defendants are without sufficient
22 information to admit or deny the allegations contained therein and on such basis
23 deny the allegations.
- 24 8. Answering the first two sentences of Paragraph 8 of the Complaint, Defendants
25 deny the allegations contained therein.

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- 1 a. Answering Paragraph 8(a) of the Complaint, Defendants are without sufficient
2 information to admit or deny the allegations contained therein or the
3 authenticity of the exhibit referenced therein and on such basis deny the
4 allegations.
- 5 b. Answering Paragraph 8(b) of the Complaint, Defendants deny that an
6 application for the mark CARTER was filed by Defendants doing business as
7 Carter Cellars and admit that the exhibit referenced therein appears to be a
8 printout of information regarding the CARTER application from the USPTO's
9 Trademark Electronic Search System (TESS) database.
- 10 c. Answering Paragraph 8(c) of the Complaint, Defendants admit that they entered
11 an agreement as reflected in Exhibit F, and deny the remaining allegations
12 contained therein.
- 13 d. Answering Paragraph 8(d) of the Complaint, Defendants are without sufficient
14 information to admit or deny the allegations contained therein or the
15 authenticity of the exhibit referenced therein and on such basis deny the
16 allegations.
- 17 e. Answering Paragraph 8(e) of the Complaint, Defendants are without sufficient
18 information to admit or deny the allegations contained therein and on such basis
19 deny the allegations.
- 20 f. Answering Paragraph 8(f) of the Complaint, Defendants admit the allegations
21 contained therein.
- 22 g. Answering Paragraph 8(g) of the Complaint, Defendants admit that they entered
23 an agreement as reflected in Exhibit H, and deny the remaining allegations
24 contained therein.
- 25 9. Answering Paragraph 9 of the Complaint, Defendants admit that they filed an
26 application for the mark CARTER CELLARS on July 19, 2007, and otherwise deny
27 the remaining allegations contained therein.
- 28

1 10. Answering Paragraph 10 of the Complaint, Defendants are without sufficient
2 information to admit or deny the allegations contained therein and on such basis
3 deny the allegations.

4 11. Answering Paragraph 11 of the Complaint, Defendants are without sufficient
5 information to admit or deny the allegations contained therein or the authenticity of
6 the exhibit referenced therein and on such basis deny the allegations.

7 12. Answering Paragraph 12 of the Complaint, Defendants are without sufficient
8 information to admit or deny the allegations contained therein or the authenticity of
9 the exhibit referenced therein and on such basis deny the allegations.

10 13. Answering Paragraph 13 of the Complaint, Defendants are without sufficient
11 information to admit or deny the allegations contained therein or the authenticity of
12 the exhibit referenced therein and on such basis deny the allegations.

13 14. Answering Paragraph 14 of the Complaint, Defendants are without knowledge as to
14 the allegations contained therein and on such basis deny such allegations.

15 15. Answering Paragraph 15 of the Complaint, Defendants are without knowledge as to
16 the allegations contained therein and on such basis deny such allegations.

17 16. Answering Paragraph 16 of the Complaint, Defendants deny the allegations
18 contained therein.

19 17. Answering Paragraph 17 of the Complaint, Defendants are without knowledge as to
20 the allegations contained therein and on such basis deny such allegations.

21 18. Answering Paragraph 18 of the Complaint, Defendants admit the allegations
22 contained therein.

23 19. Answering Paragraph 19 of the Complaint, Defendants admit that they filed the
24 trademark application Serial No. 77/380943 and deny the remaining allegations
25 contained therein.

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1 20. Answering Paragraph 20 of the Complaint, Defendants admit that their legal
2 counsel received a letter from Plaintiff's legal counsel dated February 20, 2008,
3 admit that the referenced exhibit appears to be a true and correct copy of such letter,
4 and otherwise deny the remaining allegations contained therein.

5 21. Answering Paragraph 21 of the Complaint, Defendants admit the contents of the
6 first sentence of such paragraph, deny that the exhibit referenced therein is a true
7 copy of Defendants' counsel's letter to Plaintiff dated February 21, 2008 together
8 with the attachments to such letter, and otherwise deny the remaining allegations
9 contained therein.

10 22. Answering Paragraph 22 of the Complaint, Defendants admit that the referenced
11 exhibit appears to be a true and correct copy of the letter from Plaintiff's counsel to
12 Defendants' counsel dated April 29, 2008, and otherwise deny the remaining
13 allegations contained therein.

14 23. Answering Paragraph 23 of the Complaint, Defendants admit the allegations
15 contained therein.

16 24. Answering Paragraph 24 of the Complaint, Defendants are without sufficient
17 information to admit or deny the allegations contained therein and on such basis
18 deny the allegations.

19 25. Answering Paragraph 25 of the Complaint, Defendants admit the allegations
20 contained therein.

21 26. Answering Paragraph 26 of the Complaint, Defendants deny the allegations
22 contained therein.

23 27. Answering Paragraph 27 of the Complaint, Defendants are without sufficient
24 information to admit or deny the allegations contained therein and on such basis
25 deny the allegations.

26 28. Answering Paragraph 28 of the Complaint, Defendants are without sufficient
27 information to admit or deny the allegations contained therein and on such basis
28 deny the allegations.



DICKINSON, PEATMAN & FOGARTY
A Professional Law Corporation

- 1 29. Answering Paragraph 29 of the Complaint, Defendants re-allege and incorporate by
- 2 reference their responses to Paragraphs 1 through 28 of the Complaint.
- 3 30. Answering Paragraph 30 of the Complaint, Defendants deny the allegations
- 4 contained therein.
- 5 31. Answering Paragraph 31 of the Complaint, Defendants admit that they filed their
- 6 trademark application for CARTER ESTATE after their counsel's initial letter to
- 7 Plaintiff dated January 23, 2008 and with knowledge of Plaintiff's COLA, and deny
- 8 the remaining allegations contained therein.
- 9 32. Answering Paragraph 32 of the Complaint, Defendants deny the allegations
- 10 contained therein.
- 11 33. Answering Paragraph 33 of the Complaint, Defendants deny the allegations
- 12 contained therein.
- 13 34. Answering Paragraph 34 of the Complaint, Defendants admit the allegations
- 14 contained therein.
- 15 35. Answering Paragraph 35 of the Complaint, Defendants deny the allegations
- 16 contained therein.
- 17 36. Answering Paragraph 36 of the Complaint, Defendants deny the allegations
- 18 contained therein.
- 19 37. Answering Paragraph 37 of the Complaint, Defendants re-allege and incorporate by
- 20 reference their responses to Paragraphs 1 through 36 of the Complaint.
- 21 38. Answering Paragraph 38 of the Complaint, Defendants deny the allegations
- 22 contained therein.
- 23 39. Answering Paragraph 39 of the Complaint, Defendants deny the allegations
- 24 contained therein.
- 25 40. Answering Paragraph 40 of the Complaint, Defendants deny the allegations
- 26 contained therein.
- 27 41. Answering Paragraph 41 of the Complaint, Defendants deny the allegations
- 28 contained therein.



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1 42. Answering Paragraph 42 of the Complaint, Defendants deny the allegations
2 contained therein.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiff has acted with unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Defendants demand judgment dismissing the Complaint, awarding Defendants the costs, expenses, and attorneys' fees it incurs in defending this matter, and awarding Defendants such other relief as the Court deems just and proper.

Dated: 6/19/08

Respectfully submitted,

DICKENSON, PEATMAN & FOGARTY

809 Coombs Street
Napa, California 94559
Telephone: 707-252-7122
Facsimile: 707-255-6876

Attorneys for Defendants,
Mark Carter and Christy Carter

COUNTERCLAIM

1 Counterclaimants, Mark Carter, an individual, and Christy Carter, an individual
 2 (“Counterclaimants”), for their counterclaim against Counterdefendant, South Coast Winery,
 3 Inc., a California corporation (“Counterdefendant”), allege as follows:

JURISDICTION AND VENUE

6 1. This is an action to redress violations of the federal Lanham Act for unfair competition
 7 (15 U.S.C. §1125(a)), violation of the California Business and Professions Code for
 8 unfair competition (Cal. Bus. & Prof. Code §17200) and the dissemination of false and
 9 misleading statements (Cal. Bus. & Prof. Code §17500), and common law trademark
 10 infringement, as the result of willful and unauthorized use by Counterdefendant of
 11 colorable imitations of Counterclaimants’ trademark, as more fully set forth hereinafter.
 12 Counterclaimants seek permanent injunctive relief restraining Counterdefendant’s
 13 infringement of Counterclaimants’ trademark, monetary damages, attorneys’ fees and
 14 related relief.

15 2. This Court has subject matter jurisdiction over Counterclaimants’ claim under and
 16 pursuant to 15 U.S.C. §1121 and 28 U.S.C. §1338(a), as the claims arise under the
 17 federal Lanham Act, 15 U.S.C. §§1051-1127. This Court also has pendent jurisdiction
 18 over all related claims herein in accordance with 28 U.S.C. §1338(b).

19 3. Upon information and belief, Counterdefendant, resides in this judicial district.
 20 Therefore, venue is proper in this district pursuant to 28 U.S.C. §1391(b).

THE PARTIES

21 4. Counterclaimants Mark Carter and Christy Carter are individuals with their principal
 22 place of business located at 301 L Street, Eureka, California 95501.

1 5. Upon information and belief, Counterdefendant South Coast Winery, Inc. is a
2 California corporation with its principal place of business located at 34843 Rancho
3 California Road, Temecula, California 92591.

4

5 **ALLEGATIONS COMMON TO ALL CLAIMS**

6 6. Counterclaimants are the owners of the trademark CARTER CELLARS for wine, as
7 well as the owner of a pending federal trademark application for the mark CARTER
8 CELLARS for wine (U.S. Application Serial No. 77/234177). Counterclaimants have
9 used the mark CARTER CELLARS on and in association with wine since January 31,
10 2006, long prior to the acts of Counterdefendant complained of herein. In addition,
11 Counterclaimants have used the mark CARTER on and in association with wine,
12 beginning in 2001 and continuing up until Counterclaimants' adoption of the mark
13 CARTER CELLARS in January 2006, and the public and media continue to this day to
14 refer to Counterclaimants' wine as CARTER.
15

16 7. Counterclaimants' CARTER CELLARS mark is used on wine from California,
17 primarily Merlot and Cabernet varietals. Over the years, Counterclaimants' CARTER
18 and CARTER CELLARS wines have received a substantial amount of unsolicited
19 media attention and critical acclaim, with the CARTER CELLARS wines most recently
20 being awarded scores of 95 and 96 from *Wine Spectator* magazine and being named
21 among the best Cabernet wines from California. As such, Counterclaimants own
22 extremely valuable goodwill which is symbolized by their CARTER CELLARS
23 trademark.
24

25 8. Upon information and belief, Counterdefendant South Coast Winery, Inc. is a wine
26 producer, winery, resort, restaurant, and spa based in Temecula, California.
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1 9. In January of 2008, Counterclaimants discovered that Counterdefendant had received
2 three (3) Certificates of Label Approval ("COLA") from the Alcohol and Tobacco Tax
3 and Trade Bureau ("TTB") for the production and bottling of California wine bearing
4 the mark CARTER ESTATE, with the varietals of such wine being Merlot and
5 Cabernet. The COLAs were issued by the TTB on August 1 & 2, 2007.

6 10. Counterdefendant's CARTER ESTATE mark is confusingly similar to
7 Counterclaimants' CARTER CELLARS mark given that the marks are virtually
8 identical in sight, sound and meaning. In addition, the goods offered by
9 Counterdefendant under its mark, namely, Merlot and Cabernet wines from California,
10 are identical to those which Counterclaimants offer under their CARTER CELLARS
11 mark, and travel through the same distribution channels and are advertised in the same
12 marketing channels as Counterclaimants' CARTER CELLARS wine.

13 11. On January 23, 2008, Counterclaimants advised Counterdefendant via letter of
14 Counterclaimants' trademark rights in the mark CARTER CELLARS for wine and
15 requested that Counterdefendant agree not to use the confusingly similar mark
16 CARTER ESTATE on the identical product. As Counterclaimants' investigation of
17 Counterdefendant's use of the CARTER ESTATE mark suggested that
18 Counterdefendant had not yet begun use of the CARTER ESTATE mark,
19 Counterclaimants' demand was related to the prospective use of the mark by
20 Counterdefendant.

21 12. On January 25, 2008, Counterclaimants' filed a federal trademark application for the
22 mark CARTER ESTATE for wine (U.S. Application Serial No. 77/380,943), based on
23 their intent to introduce a wine under such name based upon their right to use the
24 descriptive term "estate" for wine produced and bottled on the property on which the
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1 grapes for the wine were grown, as well as to prevent Counterdefendant's prospective
2 use of the same confusingly similar mark.

3 13. On February 20, 2008, nearly one month later, Counterdefendant responded to
4 Counterclaimants' January 23, 2008 letter with a letter requesting copies of
5 Counterclaimants' CARTER and CARTER CELLARS wine labels, as well as written
6 evidence of Counterclaimants' prior use.

7 14. Counterclaimants promptly responded to Counterdefendant via letter on February 21,
8 2008 with copies of Counterclaimants' COLAs for their CARTER and CARTER
9 CELLARS labels, along with archived reviews of their CARTER wine demonstrating
10 Counterclaimants' prior rights in the CARTER CELLARS mark.

11 15. On April 29, 2008, over two months after Counterclaimants response to
12 Counterdefendant's letter requesting evidence of Counterclaimants' rights in their
13 CARTER CELLARS mark, Counterdefendant responded to Counterclaimants with a
14 letter stating that Counterdefendant did not intend to cease use of the mark CARTER
15 ESTATE for wine and alleging that the CARTER ESTATE mark was presently in use
16 on wine. The letter contained a demand that Counterclaimants abandon their federal
17 trademark application for CARTER ESTATE, withdraw their objections to
18 Counterdefendant's use or registration of CARTER ESTATE for wine, and enter into a
19 written co-existence agreement with Counterdefendant regarding the parties' respective
20 CARTER marks.

21 16. After receipt of Counterdefendant's April 29, 2008 letter, Counterclaimants came to
22 learn that on April 19, 2008, Counterdefendant filed a federal trademark application for
23 the mark CARTER ESTATE for "wines made by an estate winery in Southern
24 California and marketed in connection with a Southern California resort adjacent the
25 winery, and sold on the premises of the resort; and wine made by an estate winery in
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1 Southern California and marketed in connection with a Southern California resort, and
2 shipped to wine club members" (U.S. Application Serial No. 77/452815). No filing
3 basis was specified in the application but the application did contain a sworn statement
4 alleging that "[a]pplicant has made use of the mark by selling wine under the name
5 CARTER ESTATE at its resort in Southern California."

6 17. Counterclaimants also came to learn that Counterdefendant had filed a U.S. Service
7 Mark Application (Serial No. 78/933,334) for the mark CARTER ESTATE WINERY
8 AND RESORT for resort hotel, restaurant and health spa services. Counterclaimants
9 have filed an extension to oppose this application with the United States Patent and
10 Trademark Office.

11 12. Counterclaimants were reviewing Counterdefendant's response letter with legal counsel
13 when on May 16, 2008, before Counterclaimants had responded and with no prior
14 contact, Counterdefendant preemptively filed a declaratory judgment action in this
15 District against Counterclaimants seeking an order declaring that Counterdefendant's
16 CARTER ESTATE trademark does not infringe Counterclaimants' CARTER
17 CELLARS mark (the "Declaratory Judgment Action").

18 19. Following receipt of service of the Declaratory Judgment Action, Counterclaimants
20 contacted Counterdefendant to propose a settlement whereby Counterdefendant would
21 change its mark so as to prevent consumer confusion, while still retaining "CARTER"
22 as part of its mark. The parties stipulated to extend the deadline for Counterclaimants
23 to respond to Counterdefendant's declaratory judgment complaint while
24 Counterdefendant considered Counterclaimants proposal. On June 12, 2008,
25 Counterdefendant rejected Counterclaimants' proposal. Counterclaimants promptly
26 filed an infringement action in the Northern District of California as this is where the
27 infringement claim originally arose and where Counterclaimants are suffering harm as a
28

1 result of Counterdefendant's use of the infringing mark. On June 18, 2008, counsel for
2 Counterclaimants contacted counsel for Counterdefendant to meet and confer
3 concerning a transfer of Counterdefendant's declaratory judgment action to the
4 Northern District of California to be joined with Counterclaimant's infringement action.
5 Counsel for Counterdefendant refused to agree to such transfer. Pursuant to the Local
6 Rules for the Central District of California, on July 8, 2008, Counterclaimant intends to
7 file a motion to transfer this action to the Northern District of California on the basis of
8 convenience, for purposes of judicial economy and in the interests of justice reflected
9 by Counterdefendant's peremptory filing of the Declaratory Judgment Action in an
10 attempt to forum-shop.

12 20. Through Counterdefendant's filing of the Declaratory Judgment Action,
13 Counterdefendant has clearly indicated that it does not intend to cease use of the
14 CARTER ESTATE mark on wine and has intentionally continued to infringe Plaintiff's
15 CARTER CELLARS mark.

16 21. Continued use of the CARTER ESTATE mark by Counterdefendant is likely to
17 confuse consumers into believing that Counterdefendant's CARTER ESTATE brand
18 wines are affiliated with, associated with, connected to, or sponsored by
19 Counterclaimants, and Counterdefendant will unjustly benefit from such association.

20 22. Upon information and belief, Counterdefendant plans on continuing to advertise and
21 sell the CARTER ESTATE brand wine. Unless restrained by this Court,
22 Counterdefendant will continue to unfairly compete with Counterclaimants and unfairly
23 capitalize upon Plaintiff's strong reputation as a producer of California Cabernet and
24 Merlot wine by using such mark, wherefore Counterclaimants are without adequate
25 remedy at law.

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1 23. Counterdefendant's infringing use of the confusingly similar CARTER ESTATE mark
2 has financially harmed Counterclaimants by diminishing the value of
3 Counterclaimants' CARTER CELLARS mark, and Counterdefendant's infringing use
4 of the CARTER ESTATE mark has increased the profitability of Counterdefendant's
5 CARTER ESTATE brand to the detriment of Counterclaimants.

24. This case is an exceptional case entitling Counterclaimants to treble damages and attorneys' fees.

FIRST CAUSE OF ACTION

(Federal Unfair Competition under 15 U.S.C. §1125(a))

11 25. Counterclaimants restate and reaver the allegations of Paragraphs 1 through 24,
12 inclusive, and the acts of Counterdefendant asserted therein as if set forth in full as part
13 of this Cause of Action.

14 26. The Counterdefendant's above-averred actions constitute use in commerce of a word,
15 name or device and false designation of origin which is likely to cause confusion, or to
16 cause mistake, or to deceive as to affiliation, connection or association of
17 Counterdefendant with Counterclaimants or as to the origin, sponsorship or approval of
18 the Counterdefendant's goods or services in violation of 15 U.S.C. §1125.
19

20 27. Counterdefendant's above-averred actions constitute the use of a false or misleading
21 description or representation of fact as to the nature, characteristic, or quality of
22 Counterdefendant's goods in interstate commerce in connection with goods in
23 commercial advertising or promotion.

SECOND CAUSE OF ACTION

(State Unfair Competition under Cal. Bus. & Prof. Code §17200)

28. Counterclaimants restate and reaver the allegations of Paragraphs 1 through 27, inclusive, and the acts of Counterdefendant asserted therein as if set forth in full as part of this Cause of Action.

29. The Counterdefendant's above-averred actions constitute unlawful, unfair or fraudulent business acts or practices in violation of Cal. Bus. & Prof. Code §17200.

THIRD CAUSE OF ACTION

(False or Misleading Statements under Cal. Bus. & Prof. Code §17500)

30. Counterclaimants restate and reaver the allegations of Paragraphs 1 through 29, inclusive, and the acts of Counterdefendant asserted therein as if set forth in full as part of this Cause of Action.

31. The Counterdefendant's above-averred actions constitute the dissemination and making of untrue or misleading statements, which by the exercise of reasonable care should have been known to be false or misleading, in violation of Cal. Bus. & Prof. Code §17500.

FOURTH CAUSE OF ACTION

(Common Law Trademark Infringement)

32. Counterclaimants restate and reaver the allegations of Paragraphs 1 through 31, inclusive, and the acts of Counterdefendant asserted therein as if set forth in full as part of this Cause of Action.

33. The Counterdefendant's above-averred actions constitute trademark infringement and passing off in violation of the common law of California.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimants request that judgment be entered as follows:

1. That Counterdefendant, its principals, partners, franchisees, agents, employees,
2 licensees, affiliates, any parent and subsidiary companies, attorneys and
3 representatives and all of those in privity with or acting under its direction and/or
4 pursuant to its control, be preliminarily and permanently enjoined and restrained,
5 from directly or indirectly:
 - 6 a. Using the mark CARTER ESTATE, or terms or marks confusingly similar
7 to Counterclaimants' CARTER CELLARS mark, in connection with the
8 advertisement, promotion, distribution, offering for sale or selling of wine or
9 related goods or services;
 - 10 b. Performing any acts or using any trademarks, service marks, names, words
11 or phrases that are likely to cause confusion, to cause mistake, to deceive or
12 otherwise mislead the trade or public into believing that Counterclaimants
13 and the Counterdefendant are one in the same or are in some way connected
14 or that Counterclaimants are a sponsor of the Counterdefendant or that the
15 goods or services of the Counterdefendant originate with Counterclaimants
16 or are likely to lead the trade or public to associate the Counterdefendant
17 with Counterclaimants;
- 18 2. That Counterdefendant be required to file with the Court, and serve on
19 Counterclaimants, a statement under oath evidencing compliance with any
20 preliminary or permanent injunctive relief ordered by the Court within fourteen (14)
21 days after the entry of such order of injunctive relief.
- 22 3. That Counterdefendant, its principals, partners, franchisees, agents, employees,
23 licensees, affiliates, any parent and subsidiary companies, attorneys and
24 representatives and all of those in privity with or acting under its direction and/or
25 pursuant to its control, be required to deliver up for destruction all advertising,
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1 promotional materials, point of sale materials, packaging, labels, corks, bottles and
2 any other materials bearing the infringing mark together with all artwork, plates,
3 molds, matrices and other means and materials for making and reproducing the
4 same;

5 4. That Counterdefendant be ordered to pay Counterclaimants monetary damages for
6 the harm resulting from infringement of Counterclaimants' mark, in an amount to
7 be determined at trial;

8 5. That Counterclaimants' damages be trebled and that Counterdefendant be ordered to
9 pay Counterclaimants' attorneys' fees on the basis that this is an exceptional case;

10 6. That the Director for the United States Patent and Trademark Office be directed to
11 refuse Counterdefendant's trademark and service mark applications, Serial Nos.
12 77/452,815 and 78/933,334.

13 7. That Counterclaimants have such other and further relief as this Court shall deem
14 just and proper on the merits.

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2 Dated: 6/19/08

3 Respectfully submitted,

4 DICKENSON, PEATMAN & FOGARTY

5
6 By J. Scott Gerien
7 Megan Ferrigan Healy8 809 Coombs Street
9 Napa, California 94559
10 Telephone: 707-252-7122
11 Facsimile: 707-255-687612 Attorneys for Counterclaimants,
13 Mark Carter and Christy Carter

DPCH

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PROOF OF SERVICE

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 809 Coombs Street, Napa, California 94559.

On June 20, 2008, I placed a copy of the following document(s):

- **ANSWER AND COUNTERCLAIM**

in a sealed envelope addressed as shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The persons served are as follows:

David L. Hoffman
Law Offices of David L. Hoffman
28494 Westinghouse Place, Suite 204
Valencia, CA 91355

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 20, 2008, at Napa, California.

Jaymie Kilgore
Legal Secretary